Office - Supreme Court
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ALEXANDER L. ST

No. 80-1934

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

IN RE: ALIEN CHILDREN EDUCATION LITIGATION, STATE OF TEXAS and TEXAS EDUCATION AGENCY,
Appellants

v.

UNITED STATES,
Intervenor-Appellee

and

CERTAIN NAMED and UNNAMED UNDOCUMENTED ALIEN CHILDREN,
Appellees

On Appeal from the United States Court of Appeals for the Fifth Circuit.

BRIEF OF
American Friends Service Committee
United Church of Christ Board of Homeland Ministries
The General Board of Church and Society of the United Methodist Church
National Board of Jesuit Social Ministries
The Lutheran Council in the U.S.A.

AMICI CURIAE
Joyce D. Miller
Attorney for Amici
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THE LEGAL INTELLIGENCER, 10th & SPRING GARDEN STREETS, PHILA., PA 19123 (215) 236-2000

MOTION FOR LEAVE TO FILE

The following organizations respectfully move
leave to file the attached brief as *amici curiae* in supp
of the Appellees in this case:

American Friends Service Committee
United Church of Christ Board of Homeland Min
tries
The General Board of Church and Society of t
United Methodist Church
National Board of Jesuit Social Ministries
The Lutheran Council in the U.S.A.

In support of the motion Amici state:

1. The issues involved in this case, whet
undocumented aliens are entitled to equal protection
the laws and if so, the extent of such protection, v
have a far-reaching impact on many individuals w
whom the *Amici* work daily. *Amici* believe that the sta
has been set for an erosion of the progress made by
people of Mexican ancestry, citizens and aliens. *Am*
believe that this court should include in its analysis
the application of the equal protection clause the hist
cal discriminatory and exploitative treatment of Me
cans and Mexican Americans in this country. For
most part *Amici* have confined themselves to this iss

The consent of the attorneys for all parties in t
case has been obtained and letters to this effect ha
been forwarded to The Clerk of the Court.

Respectfully submitted,

Joyce D. Miller
110 Fayette Street
Bridgeton, New Jersey 08
(609) 455-2304
Attorney for Amici

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STATE OF TEXAS and TEXAS EI

v.

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ALIEN CHILDR

On Appeal from the United State
the Fifth Circuit

BRIEF OF

American Friends Service
United Church of Christ E
Homeland Ministries
The General Board of Chu
the United Methodist Cl
National Board of Jesuit S
The Lutheran Council in

INTEREST

1. American Friends Servi

The American Friend
1917 been active in worl
service, reconciliation am
programs to overcome di
The AFSC carries out its
branches of the Religious
The AFSC has a vital inter
Friends' belief in the infin
and the equality of all hun
This testimony has led the
portion of its resources to
the causes of violence in s
imbalance of wealth, in e

Since the early 1950's
and Florida, the AFSC has
to gain for farmworkers a
can origin, greater control
conditions. In 1978, in c
Friends Service Commit
Mexico-U.S. Border Progr
lutions in the many proble
ship between Mexico and
cern of the AFSC/MFSC
AFSC to testify before the
gration and Refugee Polic
long-term look at the econ
ing adopted by Mexico wi
ment of the United States
favor rapid growth that ac
at the same time diverting
culture and destroying t
economies. In the resulti
root causes of Mexican m
Moreover, once the undo
the United States, their pr

ployers whose labor needs
net for the Mexican work
are for someone else.

In three years of pr
learned that a significant p
are here to stay. It has se
can migration have inclu
was not frequent a dec
undocumented workers fi
cial security. They consur
society and pay the sales t
undocumented residents
nation, pay taxes, but are
benefit of their labor.

This case involves th
tion for the children of u
Texas. AFSC experience
these children to receive a
entitled to it by the econor
deny it would violate the r
problem of enormous prop
nial of an education to th
persons in Texas would s
dent for discrimination a
would make justifiable
against people who by de
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2. United Church o
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The United Church
is a recognized instrumen
Christ, a major Christian
6,000 congregations thro
Board is charged with th
the homeland mission of

which includes evan
development and im
social injustices. It
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of socially deprived
and migrant workers
Texas and other area
cern of the United C
tries' task force on im
er education of the c
lawsuit, is of extrem
dren, but to the coun
support.

3. The General
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The General Bo
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arm of the United M
history of advocacy f
the *Social Principles*
1980, the Board con
dren to an adequate

The Church has
cessity of education
insure that basic hu
the right to an educa
undocumented, perm
grants, are protected
This case is a prime
all children to an ad
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4. National Boa

This brief is pre
suit Social Ministrie
Jesuits engaged in
tional Office, the B

special interests of
gaged in ministry t
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The members
in Social Ministrie
effort of the Society
the plight of refu
which Jesuits thro
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ugee issues in the
Jesuit Social Minis
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An integral pa
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cation of immigran
tional Office of Soc
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undocumented pe
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Consequently, the
nant with the posit
suit Social Ministr
tional purpose.

5. The Luther
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ation of Eva
Lutheran C

Joining in this
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tlement activ
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Appellees.

Amici al
cation . . .

> is
> child to
> professi
> normall

> doubtful that any child may reasonably be expected to succeed in life if he or she is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms." *Brown v. Bd. of Ed. of Topeka*, 347 U.S. 483 (1954).

If the undocumented alien child is deprived of an education, that child will be forced to continue in the desperate situation that all too many undocumented aliens are in. The *Amici* have written this brief to draw the Court's attention to the lawlessness, economic exploitation and racism which the undocumented Mexican alien has been victim of for over 100 years.

SUMMARY OF THE ARGUMENT

Amici submit that it is clear that undocumented alien children are protected by the Equal Protection Clause of the Fourteenth Amendment. *Amici* support the arguments made by the Appellees that the wording of the Fourteenth Amendment, the case law and common sense support a holding that undocumented aliens are protected by the Equal Protection Clause.

The legislation challenged in this case excludes undocumented alien children from a free public education in Texas. This brief argues that the case law and policy underlying the case law require that this legislation be subjected to strict scrutiny.

The undocumented alien has no access to the political process. Traditionally, groups excluded from the political process have been accorded protection under a strict standard of review. Additionally, the vast majority of undocumented alien children in Texas are Mexican. As such they are part of an ethnic group whose citizen members have needed the highest protection of the courts. Persons of Mexican ancestry, whether citizens,

legal aliens or undocumented aliens, share physical, language and cultural characteristics that set them apart from the Anglo majority and make them identifiable as part of a distinct and insular minority. The combination of ethnicity and alienage have subjected this group to a discrimination and prejudice as pervasive and severe as that faced by blacks in this country. *Amici* set forth that history in this brief because it is within that context that this legislation must be reviewed. The legislation challenged in this case is an attempt by the State of Texas to impose further inequality on a group already overburdened and worn down by over a century of violence and inequality at the hands of the dominant society. Under these circumstances this Court must subject any additional discriminatory legislation to strict scrutiny.

Amici support in full all the arguments made by appellees in urging this Court to find Section 21.031 of the Texas Education Code constitutionally impermissible.

ARGUMENT

THIS CLASSIFICATION REQUIRES HEIGHTENED JUDICIAL SCRUTINY

A. A classification which denies access to education on the basis of alienage is suspect.

It was once settled law that differential treatment of blacks and whites was constitutionally permitted. *Plessy v. Ferguson*, 163 U.S. 537 (1896). Now a classification based on race or national origin is considered inherently "suspect". This Court requires "close judicial scrutiny" of a statute or governmental action based upon such a classification. The proponent of a measure creating "classifications constitutionally suspect" must establish an "overriding statutory purpose", *McLaughlin v. Florida*, 379 U.S. 184, 192 (1965), and bears "a very heavy burden of justification". *Loving v. Virginia*, 388 U.S. 1, 9 (1967).

When discrimination against aliens has been examined by this Court, it has been declared "inherently suspect and . . . therefore subject to strict judicial scrutiny". *Graham v. Richardson*, 403 U.S. 365, 376 (1971). This conclusion was reached after the Court recognized in *Graham, supra* at 372, that

> Aliens as a class are a prime example of a "discrete and insular" minority (see *United States v. Carolene Products Co.*, 304 U.S. 144, 152-53, N.4, 82 L.Ed. 1234, 1241, 1242, 58 S. Ct. 778 (1938) for whom such heightened judicial solitude is appropriate. Accordingly, it was said in *Takahashi*, 334 U.S. at 420, 92 L.Ed at 1488, that "The power of a state to apply its laws exclusively to its alien inhabitants as a class is confined within narrow limits."

Following *Graham, supra* this court has struck down discrimination against aliens in a variety of areas. *Sugarman v. Dougall*, 413 U.S. 634 (1973); *In re Griffiths*, 413 U.S. 717 (1973); *Examining Bd. of Eng'rs. v. Flores de Otero*, 426 U.S. 572 (1976); *Nyquist v. Mauclet*, 432 U.S. 1 (1977).

The Court has determined in recent cases a limited exception to the *Graham* rule. *Ambach v. Norwick*, 99 S. Ct. 1589 (1979); *Foley v. Connelie*, 435 U.S. 291 (1978). In those instances in which a state excludes aliens from participation in the political community, the classification will be measured against the minimum equal protection standard, the rational basis test. The instant case does not raise at all the question of participation in the political community. The limited exception is not applicable.

B. Appellees and their parents comprise an insular and powerless minority which has been subjected to a history of discrimination as pervasive and severe as that directed against blacks. Therefore, strict judicial scrutiny is warranted.

When the discrimination involved in the i
case is examined in light of the policies underlyi
special treatment of suspect and semi-suspect clas
becomes evident that strict judicial scrutiny is
ranted. In *San Antonio Independent School Dist*
Rodriguez, 411 U.S. 1 (1973), the Supreme Cou
forth the traditional indicia of suspectness which g
court in evaluating whether a classification is to be
strict scrutiny:

> (T)he class is . . . saddled with such disabilit
> subjected to such a history of purposeful u
> treatment, or relegated to such a position of p
> powerlessness as to command extraordinary p
> tion from the majoritarian political process
> U.S. at 28.2.

The standards set forth above have been criticiz
broad and imprecise.[1] Nevertheless, indicia of su
ness have emerged from later cases in which the
has clearly limited the classes that are acc
heightened protection.

Quite specific criteria have emerged: that th
crimination against the class approach the sever
pervasiveness of the historic discrimination a
blacks,[2] that the class lack effective political power.
Court has plainly been guided by two central con
— notions of fairness informed by analogy to discri
tion against blacks[4] and a sense of the judicial obli

---

1. See Wilkinson, "The Supreme Court, the Equal Pro
Clause, and the Three Faces of Constitutional Equality", 6
Rev. 945, 980 (1974) and *Sugarman v. Dougall*, 413 U.S. 6
(1973) (Rehnquist, J., Dissenting).

2. See for example, *Mathews v. Lucas*, 427 U.S. 495,
(1976); *Mass. Bd. of Retirement v. Murgia*, 427 U.S. 307,
(1976) and *Frontiero v. Richardson*, 411 U.S. 677 (1973).

3. *San Antonio v., Rodriguez, supra*.

4. See, e.g. *Frontiero v. Richardson*, 411 U.S. 677, 685
(plurality opinion) (comparing gender discrimination to disc
tion against blacks).

to protect politically handicapped groups from di
tages imposed by the majoritarian political p
Amici recognize that this Court has been reluctа
tablish "new" "suspect" classes or fundamental i
unless these criteria are met.

Amici suggest that any reluctance to est
suspect classification should give way in the inst
because the historic treatment of the undocu
Mexican alien is an unbroken history of exploit
governments and citizens alike which clearly m
criteria for a suspect classification.

Graham v. Richardson, *supra*, and the oth
cited as holding that alienage is a suspect class
concerned documented aliens. Their rationale is
appropriate for an analysis of a classification con
the undocumented alien.

The undocumented alien lives in constant f
he or she will be apprehended and, accordingly, c
seek even the most basic legal protectio
documented aliens, the undocumented alien
vote. Fearful of apprehension, the undocument
is unable even to speak up and point out his/h
lems to others who might be persuaded to vote in
behalf. Moreoever, in Texas and the Southwes
ally, Chicano citizens themselves lack effective
power. Historically, the undocumented alien h
exploited and discriminated against by individu
bers of the dominant society and by local and st
ernments. The extent of this discrimination aga
exploitation of Mexican undocumented aliens v
sented at the federal district court trial of this c

The record in the instant case also shows
overwhelming number of undocumented al
Texas and throughout the Southwest are of Mex
cestry. People of Mexican ancestry in this

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5. See e.g. *San Antonio v. Rodriquez*, supra. See
ment, "A Dual Standard for State Discrimination Against
Harvard L. Rev. 1516, 1524 (1979).

whether citizens, documented aliens or undo
aliens, have been subjected to a history of disc
that parallels that of blacks. The courts have
this historic discrimination. *Keyes v. School D*
1, Denver, 413 U.S. 189, (1973) *Cisneros*
Christi — ISD, 467 F.2d 142 (5th Circuit 197
nied, 413 U.S. 920 (1972). In *Keyes, supra,*
this Court stated

> But there is also much evidence that in
> west Hispanos and Negroes have a g
> things in common . . . In fact, the Dis
> itself recognized that "[o]ne of the things
> Hispano has in common with the Ne
> nomic and cultural deprivation and discri
> 313 F. Supp. at 69.

Below *Amici* set forth a synopsis of the hi
ploitation of the undocumented Mexican al
country. It will demonstrate a history of disc
which so closely rivals that of blacks in severi
vasiveness that, similarly, the need for str
scrutiny cannot be denied.

**1. Persons of Mexican ancestry are historic vi
cial myths and stereotypes used to justify
ferior status and exploitation.**

a) Mexicans as an inferior race.

Mexicans, like blacks, were early victi
American myths of racial "inferiority". Ster
cerning persons of Mexican ancestry, sim
developed about blacks in Texas and other
South, began in the early years of the nin
tury. According to Ralph Guzman, in an
lished in *The California Historical Quarte*
cial ideologies prevailing elsewhere in the U
found ready acceptance in the Southwest.

notes, prevailing views of race had a
with blacks as the reference population

Guzman has concluded that in Tex
ciety tended to equate Mexicans wit
transferring notions of racial inferiority
to the other. The dominant society attrib
strains that some Mexican people reflec
tury Louisiana and Texas slave runaw
were indeed descendants of black slave
date the Anglo tendency to equate al
Chicanos, especially the darker ones, w

In support of his bill to restrict M
tion in 1926, Box argued that Mexican i
"illiterate, unclean, peonized masses"
product of "a mixture of Mediterranean-
peasants with low grade Indians who di
tinction but submitted and multiplied a

As a result of this equating of Mexic
Anglos came to regard Mexicans as poss
traits ascribed to blacks:[9] undependabl
lazy, childlike and indolent. Mexican
scribed as drunks and criminals and of

Even the somewhat "positive" n
about blacks to support their subordi
blacks as a happy people, have been a
cans as well.[11]

Those who wanted unlimited immi
cans as workers emphasized the tempo
cility of the Mexican.

---

6. R. Guzman, "The Function of Anglo-A
the Political Development of Chicanos", printed
Edited by F. Chris Garcia.

7. Guzman, *supra* Note 6 at 25.

8. U.S. Congress, Report of the Immigratio
Cong. 34d Sess., 1910—1911, 1:41.

9. G. Myrdal, *An American Dilemma* (194

10. Guzman, *supra* at 25-26.

11. See Myrdal, *supra* Note 9 at 108.

> All they want is a month's lal
> States, and that is enough to
> Mexico for six months . . . In ou
> not cause any trouble, unless the
> time and become Americanized;
> ile people. They can be imposed
> go out and make them do anyth

Denial of education was rational
ful to Mexicans.

> If they were miserable or unhapp
> right Mr. Educator, do your da
> Mexicans are a happy people, ha
> they don't want responsibility,
> float along, sing songs, make ci
> compelling Mexicans to go to sch
> prived them of anything, neithe
> happiness. By compelling them t
> crease their taste for things they
> they haven't the intellect, instinc
> quire.[13]

b) Fear of intermingling and "mo

In the 1920's nativist feeling fo
American fear that unlimited immi
ardize racial purity.

> Concern over the preservation
> Stock" was the subject of exte
> In the Southwest, the debate to
> that the region might be mon
> cans". Samuel J. Holmes, a pro

---

12. Quoted in Acuna, *Occupied Amer*
Rep. Garner (Texas).

13. Paul Shuster Taylor, "Mexican La
Imperial Valley, Univ. of Calif. Publicatio
No. 1, p. 78-79.

the University of California,
like the African slaves of an e
a problem that might not end
warnings about the "danger
state a large mongrel popul
Texas.[14]

The fear continues. On Janu
Morning Star (Harlingen, Texas)
"Illegal Alien Swarm Mongrelizes

This Court is well aware of
the South the fear of inter-marria
Virginia, supra.

2. Lawlessness, violence and explo
ized the relation of the domin
Mexican ancestry.

Violence and intimidation w
and the segregated South. Subdu
force was inherent in the slav
owner, with the backing, if nee
and other whites was practicall
laws. This legally unrestrained vi
Reconstruction. Any white man
black, steal or destroy his propert
action and even take his life with
al. Violence resulted from accide
nothing at all.[15]

From the initial conquest of
present, Anglos have treated M
Americans in much the same wa
blacks. Anglos have always regar
quered people. The way in wh
fought the Mexican-American W

---

14. Guzman, *supra* Note 6 at

15. G. Myrdal, "*An American Di*
and Modern Democracy", (1944) at 55

disdain with which blacks
cording to McWilliams in
Winfield Scott readily adn
"committed atrocities to n
American of Christian m
Murder, robbery and rape
the presence of tied-up m
common all along the Rio

Although the Treaty
ended the U.S. war with
ment for Mexicans living i
tion and violence which
continued. Up until 1870
frontier lawlessness that
Texas particularly. Betwe
can cattle raiders seemed
particularly devastating
large groups of Texans
burned houses and killed
intent of the Texans may
cattle killing, they comm
and murder.[17] McWillian
sum up the situation: "the
ment in the country borde
the killing of a Mexican i

In *The Great Plains*
plight of the Mexicans in

> Not only were the Me
> litical factions but the
> One law applied to th
> ous to the political l
> Americans. The Mexi
> persons but in their

16. McWilliams, North fr
17. McWilliams, *supra* N
18. McWilliams, *supra* N

> Mexican families foun
> if they did not lose in
> American lawyers. Th
> government that woul
> the higher classes di
> safeguard their proper

McWilliams reports th
one Texas area posted an
cans to leave the area wi
were a sport and could b
Anglos. A Mexican was kil
would not play the fiddle f

Between 1908 and 19
Mexicans in Texas were k
chiefly because they were
World's Work, George Marv

> . . . the killing of Mexica
> the last four years is a
> rangers have degenera
> ers. There is no penalty
> the border would ever
> shooting a Mexican . . .
> records makes you feel
> an open game season
> der.[23]

The number of killing
the Southwest from 1850 to
of lynchings of blacks for th

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19. Written by Walker Presc
supra Note 16 at 110.
20. McWilliams, *supra* Not
21. *Id.*
22. McWilliams, *supra* Not
23. Quoted in McWilliams,
24. W. Moquin and C. Van
the Mexican-Americans, p. 253

to McWilliams it w
the Twentieth Cer
Mexicans to depart
the Mexican comm
the problem for M

> . . . Guarantee
> equal rights
> States and of
> county after c
> proceedings o
> and forbidden
> instant death,
> tions.[26]

3. People of Mexic segregation an

Mexican Am
incidious discrimi
the dominant U.S
vote because they
society imposed cl
tom. These restric

Mexican Ame
ment in the admi
Mexican-American
unlawful by the C
cans and Mexican
swimming pools,[3

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25. McWilliams,
26. Quoted in M
27. See Generall
Americans and the
(1970).
28. F. Chris Garc
"The Function of Ang
ment of Chicanos", N
29. *Hernandez v.*
30. *Terrel Wells*
824C Tex Civ. App 19

and theatres and c
gation of Mexican
never statutorily m
the 1970's. People
victims of restricti

School segre
Americans was dev
ning as early as
blacks, whites and
out Texas.[33] By 19
were established in
Texas.[34] There is
not allowed to at
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Mexican Americans

31. One of the m
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Texas refused to have
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32. Digest of Op
at 45C (1947).

33. See "Project
Texas Schools," 7 H
(1972).

34. *Id* at 314.

35. *Id* at 315.

36. *Id* at 315.

37. *Id* at 317.

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38. O.M. S
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4. The undocumented alien as today's "slave".

At the Federal District Court trial of the instant case appellees presented substantial testimony and documentary evidence demonstrating the historic treatment of Mexican undocumented aliens throughout the Southwest and particularly Texas. It is clear that "the situation in South Texas for the undocumented person . . . resembles the early slavery in the United States".[39] This conclusion reached by the U.S. Commission on Civil Rights has been reiterated by a Congressional Committee as it reviewed contract labor.

> The foreign migrant is indentured to a particular farmer or farm association for the duration of his contract. One grower, speaking of the Mexican farm laborer program, said that 'we used to own slaves, now we rent them from the government'.[40]

In 1978, Leonel J. Castillo, then Commissioner of the Immigration and Naturalization Service (INS), gave a general description of what federal government officials have come to regard as a *domestic slave trade operating in the United States*:

> It's a very extensive network. We think that as many as one-fourth of all people coming across have someone helping them. They are very big operations. Some of them become a modern form of indentured servant. They pay a percentage of their salaries (to the smugglers) for years.[41]

There are many striking parallels between the once legal slavery of blacks and the modern day enslavement

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39. U.S. Commission on Civil Rights "Sin Papeles — The Undocumented in Texas" (1980) at 25.

40. Senate Subcommittee on Migratory Labor quote reported in Moquin, "A Documentary History of Mexican-Americans" p. 445.

41. S. Lewis, "Slave Trade Today", p. 7 (1979).

of undocumented aliens. The transportation of black slaves in crowded ships is a familiar image. The newest slaves are transported in vans, semi-trailer trucks and U-Haul trucks. Sometimes there is little or no food. Upwards of twenty or thirty adults are crammed into an area of sixty square feet with no air.[42]

Lewis paints a graphic picture of the horrors these undocumented aliens face, based on INS reports and an interview with an INS official.

> T. L. Giorgetti, who in 1978 was assistant director of investigations for the Chicago area INS, briefly explained the conditions of cross-country travel: "We have found instances where people have died on the trip due to dehydration. They are crammed into the vans and sometimes abandoned if the smuggler feels any heat."
>
> A few reports illustrate Giorgetti's account:
>
> February 1974: a routine check of a large truck in the Los Angeles area led to the arrest of twenty-four aliens who had been huddled together without food or water in the bay of the truck for two days. The driver was located and charged with suspicion of smuggling aliens.
>
> November 1976: twenty-seven Central Americans were driven from Los Angeles to Washington, D.C., in a metal cabin atop a pickup. They were jammed together on benches and had eaten only oranges and sandwiches on the sixty-hour cross-country trip. Officers reported that similar trips had been made from California to Boston and New York.
>
> July 1978: a Californian was arrested in Duel County, Nebraska, after twenty-six Mexicans were found jammed into his motor home — nineteen

42. Lewis, *supra* Note 41.

men, five women and two children. They were en route from Los Angeles to Chicago when they were stopped.

November 1978: A Californian was arrested in New Jersey after thirteen aliens were found in his Chevy van — ten men and three women. They were en route from California to New York. Arresting officer, Michael Trupkiewicz, a state trooper, recalled one case where twenty-five aliens had been crowded into a single van. "They transport them like cattle," he said.

January 1979: a Houston resident alien was charged in connection with the smuggling of twenty-seven undocumented Mexicans in one van.

February 1979: one man was arrested at a California rest stop when seven undocumented aliens were found in his car. Three were crammed in the trunk.

March 1979: after a tip from a Greyhound bus driver, the Border Patrol apprehended forty-three suspected undocumented aliens in a truck. The truck was driven by a seventeen-year-old.[43]

Similar accounts have been described to the Commission on Civil Rights.[44] Energetic news reporters have been able to develop evidence from interviews and reviews of court documents that hundreds of Mexican undocumented workers are made available by smugglers on order each month as farm laborers and as service workers.[45] One such reporter, *Elgin Illinois Courier*

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43. Lewis, *supra* Note 41 69-70.

44. U.S. Commission on Civil Rights, "Sin Papeles — The Undocumented in Texas" (1980) at 25.

45. See Washington, "Recruiter Aides, Indicted for Alien Smugglings," *Chicago Sun Times*, Feb. 28, 1979.

Caleca, Vic, "The Illegals of Elgin," *Elgin, (Ill.) Courier News*, Feb. 4, 1979.

— *News* reporter, Vic Caleca, began an investigati
the situation of undocumented aliens with an inte
with the wife of a convicted smuggler. He learned t
the five years before her husband's arrest in 197
had placed hundreds of undocumented aliens in
She also reported that she and her husband wou
paid out of deductions from the worker's pay fo
costs of transporting workers unable to pay in adva

A review of news articles concerning indictr
and arrests for smuggling indicates that Me
undocumented workers are supplied nationwid
smuggling rings which sell them in black marke
operations. These rings charge the aliens fees for t
portation that endangers their lives, deprive them o
if they can't pay, and subject them to intense ph
abuse.[47]

The cross-country smuggling operation is rev
through a review of such operations reported i
news media. After entering the United States
undocumented aliens are told to wait at a certain
— a drop house — for transportation north.

In February of 1979, fifty-seven undocum
aliens were discovered in a drop house raided b
INS. Drop houses are often points of assembl
groups of aliens arriving from the border.[48]

It is at drop house points that fees are ofte
lected. Nonpayment is punished by threats of de
tion or physical abuse. In one case, twenty-seven
were arrested after one alien escaped and brought
the local police. The twenty-seven aliens had
charged $225 each which they could not pay. As a

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46. Caleca, Vic, "The Illegals of Elgin," *Elgin, (Ill.)*
News, Feb. 4, 1979.

47. A list of news reports giving some idea of the natu
magnitude of the problem has been appended.

48. "57 Illegal Aliens Held", Oceanside, CA, *Oceanside*
Tribune, Feb. 9, 1979.

they were not given food by the smugglers for two
After two days, two men tried to escape. One
caught, beaten and returned. The other escaped
brought the sheriff back to the house. Six of the tw
seven were children, the youngest one was four
old. None of the aliens would identify the smuggle
cording to the Border Patrol officer involved in the
that is not unusual because undocumented alien
told that "if they say anything north of the border
they will be taken care of when they get south of th
der."[49]

John M. Crewdson, a reporter for the *New*
Times reviewed in 1980 the files of court cases an
reports and discovered numerous cases of forced
He uncovered allegations that a worker was cra
over night without food or water. He also learned
undocumented aliens are held in drop houses with
food or water and without sanitary facilities. Thos
can't pay the smugglers for their transportatio
threatened with being stripped and left in the des
the Southwest. Crewdson also learned that the wo
earnings are held while they work off indebtedne
food, transportation, housing and other charges.
workers attempt to leave, they are threatened with
ical harm or exposure to immigration officials as ill

Those who have studied the cases of forced
and physical abuse that have come to light have
cluded that some employers resort to threats, fo
debt peonage in order to insure that the worker sta
til the farmer receives a return on the money paid
the smuggler.[50]

The practices described by Crewdson are very
lar to the Black Code system of involuntary ser
which came about after the Civil War ended.

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49. D. Kelly, "27 Aliens Rescued, Arrested," *San Bern*
Sun, Feb. 13, 1979.

50. Crewdson, "Thousands of Aliens Held in Virtual Sla
U.S.", *New York Times*, October 19, 1980.

The tradition of human exploitation, l
ery, remained as a chief determinant of th
the South's economic life. Myrdal describe
having a pattern of common exploitation —
one is the oppressor of the one under hi
blacks were at the bottom and all others or
war, the old plantation system reestal
Elaborate legislation to protect the plan
against the tenants' was developed. Imme
ing the Civil War, eight Southern state
Black Codes.

> These Black Codes gave the Negro p
> little freedom. The colored man was
> only in many cases. The apprentice,
> other provisions of these statutes for
> into situations where he would l
> uncontrolled supervision of his forr
> other white men who were ready and
> ploit his labor.[51]

The Black Codes were abolished duri
tion. After reconstruction ended they mad
ance again in various forms. Debt peona
lished. Under this system a worker was
off his alleged indebtedness to his emplo

Vagrancy laws, another legacy of the
made it possible for employers to let the p
bor agents. Apprehended vagrants were fo
the chain gang, forced labor or employm
bums. The police and courts were used to
labor.[53]

The black peonage system of the
counterpart in the economic exploitatio
undocumented aliens today. INS offici
charged with practices such as releasin

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51. C. Mangum, Jr., *The Legal Status of the N*
52. *Id* at 164-70.
53. Myrdal, *supra*.

aliens for work at less than the regular wa
ing" some ranches in Border Patrol sea
ranchers to break strikes by inspecting un
plants.[54]

Many commentators have concluded
the patterns or undocumented migration
that in practice the Border Patrol functio
regulate the numbers of undocumented
country rather than to apprehend and ex

The INS has reported that employers
cheat workers of the wages or to rob them
for rent. Unscrupulous employers profit fr
able status of undocumented aliens by cal
migration and Naturalization Service t
payday to raid their shops. The INS ar
pected illegal aliens without leaving them
their wages. The employer thus saves pa
more low wages.[56] Similarly, landlords h
their profits by taking a full month's
undocumented alien and then calling in
practice allows them to rent the same apa
times every month.[57]

The American Friends Service Co
ducted field research in 1978 to prepare
the Judiciary Committee of the U.S. Sen
sidering immigration legislation. "All th
(private) organizations who have contact
mented workers have heard complaints t
often pay them less than resident workers
ductions they don't understand and so
them away without pay under threat of
over to the INS.[58]

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54. Lewis, *supra* at 98-101.

55. J. Samora, *Los Mojados: The Wetback St*

56. Lewis, *supra* at 152.

57. *Id* at 107.

58. Material concerning Immigration Propos
can Friends Service Committee for the Judiciary
Senate, May 1978.

Undocumented aliens not only
ploitation at the hands of private citi
they are also denied return on their
sound evidence that undocumente
being a drain on public services, c
enues needed for such services for
The House Select Committee on P
viewed studies and heard testimony
ported in 1978:

> Despite popular belief, illegal i
> pear to be a heavy burden on G
> vice programs. Undocumente
> more likely to pay taxes than
> programs.
>
> . . . the most current research
> cerned with illegal migration.
> reflect the frustration officials
> creasing social service costs a
> limit these costs.[59]

A North and Houston study m
partment reports: "Information o
hended indicated that 73% paid f
77% paid social security, and 44%
hospitalization insurance. In contra
ceived welfare payments, 1% obtai
participated in U.S.-funded job tra
4% collected unemployment insur
the illegal aliens received free me

Amici suggest that undocum
pate and contribute to the econom
way, one in which their labor serve
of the economic structure and in w
nied adequate compensation and s
he or she has contributed.

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59. Ehrnlich, et. al, *The Golden Doo
and the United States", (1979) p. 343.

60. Newsletter, Intercultural Devel
ation, January 1978.

The changes in the conditions
worker all seem to be for the worse
become more sophisticated and m
ployer who pays more to the sm
ruthless, even resorting to violen
While clearly the situation is not o
true slave system, the alien's fear
portation makes the prosecution o
sible.[61]

CONCLUSIO

State-enforced discrimination
aliens is virtually identical to raci
least three significant ways:

> (1) each reflects a grou
> imputed characteristics w
> imaginery, are nonetheless in
> dividual members of the grou
>
> (2) each provides gover
> for the opinion privately held
> nant group that, due to the
> these characteristics, each m
> nate group is inherently infe
>
> (3) proceeding from the
> stereotypes are accurate, eac
> and perpetuate the existence
> acteristic by requiring every
> variety of rules, all of which
> one group is in fact inferior t

The falsity of certain racial st
to blacks, has become widely reco
The record in the instant case an
Section 21.031 of the Texas Ed
acted to exclude undocumented a
public education. The state has
cept that this statute is related to

61. Crewdson, *supra* Note 50.

jective: conserving to citiz
the state's education resou
onstrates that no study of t
children on those resources
was enacted and no study
contribution to the school f
was attempted. The eviden
undocumented aliens con
the school fund as well as o
take back. In short, the
shown the falsity of a key
nant society regarding th
group takes but does not
undocumented child — is
subjection to pervasive re
types tends to influence, a
themselves. This we learne
case the age-old stereotype
literate, uninterested in edu
may become reality for the
from the most significant
break the cycle of poverty

Mexican immigrants
violence and exploitation
as severe and pervasive as
legislation which would h
the undocumented Mexica
because it falls on a group
a "suspect" class. Amici u
pellees are entitled to a fre

1972 Associated Press, "
Ring," *The Washing*

1973 Bernstein, Harry, "
Cards Seized at L.
Times, Jan. 13, 197

Charlton, Linda, "A
Coast," *The New Yo*

Keen, Harold and
Year Mexican Alien
Angeles Times, July

1974 Holles, Everett R., "
Alien-Smuggling Ri
Dec. 24, 1974

Rawitch, Robert E.,
Smuggling Trial," *L*
1974

United Press Inter
Truck, *The New Yo*

1976 Kendall, John, "Bilk
L.A. Told," *Los Ang*

Lewis, Alfred E. a
Travel Here in Smal
ington Post, Nov. 2

1977 Maxwell, Evan, "L
Buying and Sellin
Times, Feb. 22, 197

1978 "Alien Smuggling C
dent," Chula Vista,

"California Hell for
Platte, NE *Telegra*

"Fatal Alien
ments," *San*

"Illegal Tra
Louis Post-D

"Los Angele
Transporting
Oct. 22, 197

"Man Guilty
Union, Dec.

"Man Held o
Conspiracy,"

"Police Stop
Oregon, *Gaz*

"Smuggling,

"Woman is
Fort Worth S

"U.S.-Mexic
Racket," No
1978

Mark, Susa
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1, 1978

Mintz, Bill,
Alien Labor
10, 1978

Morrison, Pa
— Aliens He
Angeles Tim

Morrow, Th
'Coyote' to Q
vocate, Aug.

Mintha, Don,
of Racket in
Tribune, Nov

Norton, Clark
wide Busines
vice, June 12

Smith, Doug,
Fable," *Los A*

1979 "Alien Smug
CA, *Star New*

"Alleged Smu
CA, *Imperial*

"Eight Indict
Up," *San Die*

"Four Arraign
Gabriel Valley

"4 Deny Smu
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"Five Suspec
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Feb. 8, 1979

"Illegal Alien
Herald-Exam

"Illegal Aliens
Smuggler," *T*

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Mr. M
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